IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 696 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

MOGHUL KASAM BUDHA

Versus

MOHULHUSEN SHAHUBEG

Appearance:

1. Civil Revision Application No. 696 of 2001

MR AR THACKER for Petitioner No. 1

MR FB BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 26/08/2002

ORAL JUDGEMENT

1. Heard Mr. AR Thakkar learned advocate for the petitioner and Mr FB Brahmbhatt learned advocate for the respondent.

2. The present revision application is filed against the order passed by the Extra Assistant Judge, Bhuj-Kutchh in Civil Misc. Application No,. 627 of 1999, which was filed by the present petitioner, who was original Defendant inthe Regular Civil Suit No. 35 of 1995. The learned Trial Judge has passed an ex-parte decree on 28.8.1998. The said decree was challenged in appeal which was filed late by 11 months and 19 days. Hence, the above referred delay condonation application

was filed and it was rejected by the learned Extra Assistant Judge, Bhuj-Kutchh on the ground that there was no sufficient reason for condonation of delay.

3. After having heard the learned advocates appearing for the parties and after having considered the order passed by the court below, I am of the view that without going into the issue regarding the maintainability of the present civil revision application, in the interest of justice, the impugned order is required to be quashed and set aside and suitable directions are required to be given to the appellate court to decide the appeal on merits. However, this Court thinks it proper to observe that the parties coming to the court should always be vigilent and careful in respect of their matters and if there is any negligence or carelessness found on record, certain conditions are required to be imposed as because of the negligence of a party approaching to the Court, the other party who has got the order in his favour should not be put to a loss. Considering this aspect of the matter, while allowing this revision application and directing the Extra Assistant Judge, Kutchh at Bhuj to decide the appeal on merits, the present petitioner is directed to deposit an amount of Rs. 1500/ being the cost of this proceeding, before the appellate court within a period of two weeks from today and the appellate court shall proceed with the hearing of the appeal after the above amount is deposited by the present petitioner.

4. With the above direction, this civil revision application is allowed. The appellate court is directed to proceed with the hearing of the appeal on merits after the above amount is deposited inthe Court. Rule is made absolute to the aforesaid extent only. DS Permitted.

(K.A.PUJ, J.)
mandora/